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09/873,564	06/04/2001	Mark Josephus Lucien Maria Van Dommelen	BE000011	4219

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EXAMINER

LEVI, DAMEON E

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 18

Application Number: 09/873,564
Filing Date: June 04, 2001
Appellant(s): VAN DOMMELEN ET AL.

John C. Fox (Reg No. 24,975)
For Appellant

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GROUP 2800

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/15/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement that there are no related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 3 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

Verschueren US Patent 5,612,585 March, 1997

Thornton US Patent 4,315,193 February, 1982

(10) *Grounds of Rejection*

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Verschueren US Patent 5612285 in view of Thornton US Patent 4315193

Regarding claim 1, Verschueren discloses a high pressure discharge lamp comprising: a discharge vessel which is enveloped with clearance by an outer bulb provided with a lamp cap, which outer bulb is translucent, characterized in that the outer bulb is substantially tubular in shape (for example, see elements 3,1,2, Fig 1).

Verschueren does not disclose that the outer bulb is provided with a light-scattering layer.

Thornton discloses a discharge lamp wherein the outer bulb is provided with a light-scattering layer (for example, see element 42, Fig 3, see column 4, lines 18-25)

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a light-scattering layer on the outer bulb as taught

by Thornton in the discharge lamp assembly of Verschueren for the purpose of improving color rendition of the discharge lamp (cited by Thornton column 4, lines 26-62).

Regarding claim 3, Verschueren discloses the instant invention except a light scattering layer forming an electrostatic coating Thornton discloses wherein a light scattering layer forms an electrostatic coating (for example, see Thornton column 3, lines 67- column 4, line 2). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed an electrostatic coating by using the light scattering layer as taught by Thornton in the discharge lamp assembly as taught by Verschueren as such an approach is a known process in the art (cited by Thornton column 3, lines 67- column 4, line 2).

(11) Response to Argument

In response to Appellant's argument that the claims are not obvious in view of the cited combination of references , it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a light-scattering layer on the outer bulb as taught by Thornton in the discharge lamp assembly of Verschueren for the purpose of improving color rendition of the discharge lamp (cited by Thornton column 3 line 60 – column 4, line 62). Moreover, Thornton also discloses wherein the light scattering layer forms an electrostatic coating and that such electrostatic processes are known in the art (cited by Thornton column 3, lines 67- column 4, line 2). Moreover, the

limitation as recited in claim 3 is a process limitation in a product claim and cannot serve to patentably define the product over the prior art of record [see Product –by-process, MPEP 2113 and 2173.05(p)] It is well settled that the presence of process limitations in product claims, which product does not otherwise distinguish over the prior art, cannot impart patentability to that product. (In re Johnson, 157 USPQ 670, 1968).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner
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DEL
July 23, 2003

Conferees

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